Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ petition No. 2862/2001(S/S)
(Old No. 6808 of 1999)

Datta Ram Sharma
S/o Late Shri Sahaj Ram,
Presently Posted as Patwari
In the area Lakhwara,
Tehsil Chakrata, District-Dehradun.
..... Petitioner.

Versus

1. Member, Board of Revenue,
   U.P. at Allahabad,
2. Commissioner, Garhwal Mandal
   Dehradun.
3. District Magistrate, Dehradun.

..... Respondents.

Sri Sobhit Saharia, learned counsel for the petitioner.
Sri Nand Prasad, learned Standing Counsel for the respondents.

Date: November 19, 2005.

Hon'ble P.C. Verma, J.

By means of this petition the petitioner has prayed for a writ of certiorari to quash the termination order dated 04.02.1999, contained in Annexure – IV to the writ petition.

2. The services of the petitioner were terminated under the Rules known as **U.P. Temporary Government Servant (Termination of Services) Rules, 1975** by giving one month's salary in lieu of notice. The petitioner was initially appointed in the year 1968 on the post of Patwari in Tehsil-Chakrata, District-Dehradun and was given regular appointment in temporary capacity on the said post on 1.1.1977. In pursuance of this the petitioner

joined the duties on 1.1.1977. Since then the petitioner was continuously serving as Patwari.

3. The petitioner made a representation for his regularization and on his representation, the District Magistrate, Dehradun called for a report from Tehsildar concerned and the Tehsildar submitted a report on 22.12.1997 recommending for his regularization. The entire material was sent to the Board of Revenue by the District Magistrate.

4. It is pertinent to notice here that Tehsildar had reported that the petitioner was working form 1.1.1977. He was not regularized for the reason that in the service record he was shown to be untrained. He is working on the post of Patwari since 1.1.1977 and has completed 20 years of service. During this period his services were neat and clean. His general provident fund and group insurance was also being deducted regularly. He further reported that the petitioner was given Police training. Refresher course and regular training in Police Station like the regular employees but the petitioner has been denied the confirmation, promotion and promotion in higher grade and salary. The petitioner was denied the opportunity of training during the 20 years for no fault on his part. On this recommendation, Board of Revenue passed the order dated 29.12.1997 directing the District Magistrate, Dehradun to confirm the petitioner on the post of Patwari. The Board of Revenue has referred the Jaunsar Baber Patwari Recruitment and Conditions of Services Rules, 1949. The service of the petitioner was governed by the Jaunsar Baber Patwaris and Assistant

Patwaris Services Rules, 1968. Rule 19 of the said Rules provides for probation. It provides that the person appointed on the post of Patwari shall be on probation for a period of two years. Clause (b) of Rule 19 of the said Rules provides that it can be extended for a period of one year more by the Collector. Therefore, total period of probation, if extended, is three years. Thereafter the probation period cannot be extended. The petitioner was not given even any warning during the probation period and he was allowed to continue even after three years, which is maximum period of probation. Since the petitioner has not been terminated during his probation period, therefore after expiry of three years he became automatically confirmed. The Board of Revenue did not refer this aspect, though the Board of Revenue had directed the confirmation. The District Magistrate ignoring the order of Board of Revenue, terminated the services of the petitioner under U.P. Temporary Government Servant (Termination of Services) Rules, 1975, where in the present case the petitioner is stood confirmed after three years and merely because temporary he could not have been terminated from Government service ignoring the settled law that maximum probation period is completed and no order of his confirmation is passed, petitioner will be deemed to be confirmed. Thus, the petitioner's services could not have been terminated treating him to be the Government servant under the U.P. Temporary Government Servant (Termination of Services) Rules, 1975. The termination order is per se illegal and cannot be sustained in the eye of law.

5. Therefore, the writ petition is allowed and writ of certiorari is issued. The impugned order dated 04.02.1999 is quashed. The petitioner is reinstated in service.

(P.C. Verma, J.)
19.11.2005

P.Singh